

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,361,941 to Parekh et al. in view of US 2003/0134024 A1 to Malone et al.

Parekh show a method of filling a chilled food product into a compartment 14 of a container 6, where the container has another compartment 16 filled with a propellant. The two compartments are gas tightly separated by a moveable wall 4 and placed in an insulated jacket 39.

Parekh show all claimed features as discussed above except for using the dispenser to dispense a frozen aerated food product containing a freezing point depressant with a molecular weight less than or equal to -8 Fat +330, mixed with an ice cream product. Malone show a frozen aerated food product containing a freezing point depressant in the range of 25-37% and between 2-12% fat by weight that satisfies the above equation, see column 2, lines 51-58 and column 3, lines 9-11. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to dispense the frozen aerated food product of Malone in the device of Parekh to prevent the propellant from coming in contact with the product and alter the desired characteristics of the ice cream product.

3. Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,361,941 to Parekh et al. as modify by US 2003/0134024 A1 to Malone et al. as applied to claim 1 above, and further in view of US 3,225,967 to Heimgartner.

The Parekh-Malone combination show all claimed features as discussed above, except for the step of filling the container with propellant before filling the container with product. Heimgartner shows a container, as seen in Figs. 1 and 2, having a propellant compartment 1c that is filled with propellant before a product compartment is filled, see column 2, lines 41-47.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use the container of Heimgartner in the device of the Parekh-Malone combination to simplify the construction of the dispensing equipment and permit use of any kind of propellant since the propellant does not react with the product to be dispensed, as taught by Heimgartner.

4. Claims 6-10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,361,941 to Parekh et al. as modify by US 2003/0134024 A1 to Malone et al. as applied to claim 1 above, and further in view of US 6,553,779 to Boyer et al.

The Parekh-Malone combination show all claimed features as discussed above, except for a casing made of eutectic plates, the working pressure range of the propellant and the how long the thermal insulation preserves the product at a desired temperature. Boyer shows a frozen food dispensing machine as seen in Fig. 1, using a eutectic material surrounding the frozen food product. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use eutectic plates surrounding the frozen product to maintain the vessel at a nearly constant temperature as taught by Boyer.

In reference to the working pressure range being between 5 bar and 12 bar and the type and amount of thermal insulation, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use an suitable pressure according to the viscosity and desired flow rate of the product and enough thermal insulation to prevent the food product from spoiling, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980)

Response to Amendment

5. Applicant's arguments with respect to the rejection of claim 2 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of US 3,225,967 to Heimgartner.

Applicant's arguments with respect to claims 1, 3, 4 and 6-17 have been considered but are not persuasive. In response to applicant's argument that the references fail to show a pre-energized container that is not large or expensive, it is noted that these features are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the device of the Parekh-Malone combination locks a second gas compartment, the product is separated by a membrane 4 and the membrane propels the product out of the container when pressure is applied to the exterior of the membrane, the container then becomes a container with a product compartment and a pressurized second compartment.

In response to applicant's argument that the container in the device of the Parekh-Malone combination locks insulated cylindrical plates, claim 6 requires the dispensing apparatus to have thermal insulated plates not the container, the device of the Parekh-Malone combination is provided with a thermal insulation jacket 39, see column 3, lines 34-36.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN CARTAGENA whose telephone number is (571)272-4924. The examiner can normally be reached on M-TH (8:30AM to 7:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./
Examiner, Art Unit 3754

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